

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [REDACTED] 1921

No. [REDACTED] 49

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR,

VS.

HERMAN JANOWITZ, HERMAN OESTREICHER, HENRY
GOLDSMITH, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 12, 1922.

(27673)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 331.

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR,

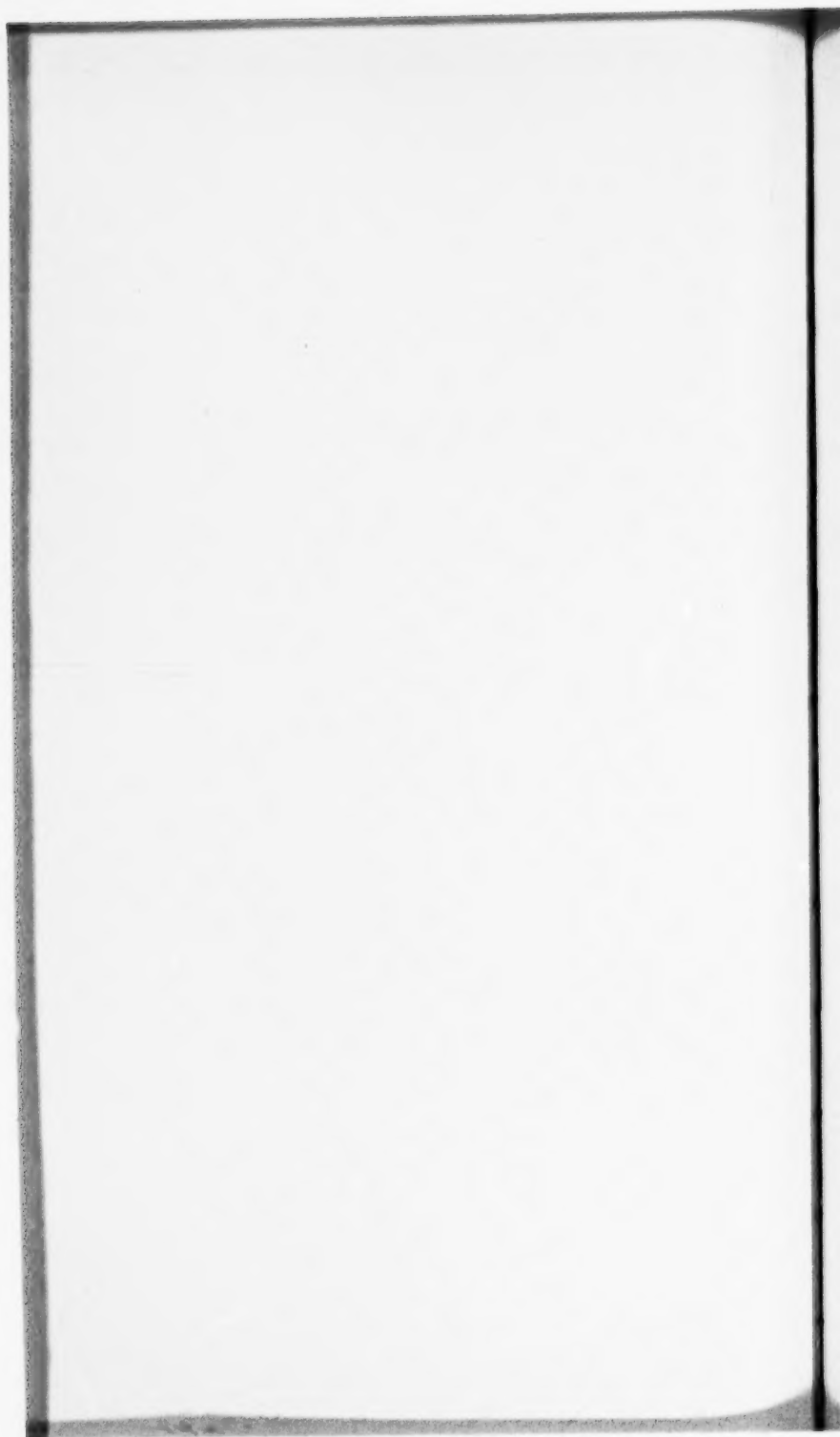
vs.

HERMAN JANOWITZ, HERMAN OESTREICHER, HENRY
GOLDSMITH, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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The President of the United States of America to the honorable judges of the District Court of the United States of the Southern District of New York in the Second Circuit, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, judges in the said District Court of United States for the Southern District of New York, before you, or some of you, between the United States of America and Herman Janowitz, Herman Oestreicher, Henry Goldsmith, Etta Levine, Julius Roth, and Joseph C. Dalton, a manifest error hath happened to the great damage of the said United States of America, as by its complaint appears,

We, being willing that such error if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, than when under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, District of Columbia, within thirty days from the date hereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

Witness, the honorable Edward D. White, Chief Justice of the United States, the 27th day of March, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.]

ALEX. GILCHRIST, Jr.,

Clerk of the District Court of the United States of America, for the Southern District of New York.

The foregoing writ is hereby allowed.

LEARNED HAND,

United States District Judge.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, Alex. Gilchrist, jr., clerk of the District Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the following pages numbered from four to forty-four, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of The United States, plaintiff in error, *vs.* Herman Janowitz, Herman Oestreicher, Henry Goldstein, Etta Levine, Julius Roth, and John C. Dalton, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 23rd day of April, in

the year of our Lord one thousand nine hundred and twenty, and of the Independence of the United States the one hundred and forty-fourth.

[SEAL.]

ALEX. GILCHRIST, Jr.,
Clerk.

3 (Endorsed:) C 21-190. U. S. District Court, Southern District of New York. The United States, plaintiff in error, versus Herman Janowitz, Herman Oestreicher, Henry Goldstein, Etta Levine, Julius Roth, and John C. Dalton, defendants in error. Writ of order. Francis G. Caffey, United States attorney, attorney for plaintiff in error.

(Stamped:) U. S. District Court, S. D. of N. Y. Filed March 27, 1920.

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Indictment.

In the District Court of the United States of America for the Southern District of New York.

Southern District of New York, ss:

The grand jurors of the United States of America being duly empaneled and sworn in the District Court of the United States for the Southern District of New York and inquiring for said district upon their oath present:

That Herman Janowitz, Herman Oestreicher, Henry Goldstein, Etta Levine, Julius Roth, and John C. Dalton, hereinafter referred to as the defendants, did, at the Southern District of New York and within the jurisdiction of this court, continuously, unlawfully, and willfully on January 18, 1919, and on each and every day thereafter up to and including November 13, 1919, conspire to defraud the United States, that is to say: That at the times herein mentioned the Secretary of the Treasury of the United States, under the authority conferred upon him by the act of Congress approved September 24, 1917, entitled "An act to authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes," and as amended by the act of Congress approved September 24, 1918, was engaged on behalf of the United States in borrowing money from the public of the United States, by selling and offering for sale through persons duly authorized war-savings certificates of the United States of the series of 1918 and 1919, and was engaged in selling and offering for sale war-savings certificate stamps
5 of the United States, to be used as evidence of payment for and on account of said war-savings certificates of the United States.

And by the terms of the said acts of Congress, it was provided that date of maturity of war-savings certificates of the United States should be at a time not exceeding five years from the date of issue

thereof, and that pursuant to the authority conferred upon him by the said act of Congress, by circular dated November 15, 1917, the Secretary of the Treasury fixed the date of issue of war-savings certificates of the series of 1918 as January 2, 1918, and fixed the date of maturity of said series as January 1, 1923, and by circular dated December 18, 1918, fixed the date of issue of war-savings certificates of the series of 1919 as January 1, 1919, and the date of maturity of said series as January 1, 1924;

And by the terms of said acts of Congress the Secretary of the Treasury of the United States was empowered and authorized to determine the prices at which said war-savings certificates of the United States were to be sold and to prescribe the form of said war-savings certificates and the terms and conditions of the sale thereof;

And by the terms of said acts of Congress, it was further provided that the said war-savings certificates of the United States should be payable before maturity upon such terms and conditions as the Secretary of the Treasury should prescribe, and the Secretary of the Treasury was authorized to prescribe the terms and conditions under which the war-savings certificates would be payable by the United States prior to maturity thereof;

And it was further provided by said acts of Congress of September 24, 1917, and September 24, 1918, that the amount of war-savings certificates of the United States of any one series sold to any one person at any one time should not exceed the maturity value of \$100 and that it should not be lawful for any one person at any one time to hold war-savings certificates of the United States of any one series of an aggregate maturity value exceeding \$1,000.

And the Secretary of the Treasury of the United States under the authority conferred upon him by said acts of Congress, by circulars issued by him on November 30, 1917, and December 18, 1918, prescribed the form of and the terms and conditions of the sale of war-savings certificates of the United States, that is to say, that by the circular of November 30, 1917, the Secretary of the Treasury prescribed terms and conditions of the sale of war-savings certificates of the series of 1918, and by the circular of December 18, 1918, the terms and conditions of the sale of war-savings certificates of the series of 1919.

And among the terms and conditions of said sales of said war-savings certificates of each series 1918 and 1919, the said Secretary of the Treasury prescribed, as applicable and governing the sale of each series thereof, among other things:

That no war-savings certificates of the United States would be issued by the United States unless at the same time one or more war-savings certificates stamps should be purchased and affixed thereto, and that the name of the owner of each war-savings certificate of the United States must be written upon such certificate

at the time of the issuance thereof, that the said war-savings certificates of the United States were not transferrable and were payable by the United States only to the respective owners named thereon, except in cases of death or disability of the owner thereof.

7 And that an owner of a war savings certificate, at his option, would be entitled prior to the maturity of war savings certificate of the United States to receive at a money order post office of the United States upon surrender of his certificate to said post office, in respect to each war savings certificate stamp then affixed to such war savings certificate, the amount of money fixed by the Secretary of the Treasury to be the price at which said war savings certificate stamps should be sold and redeemed by the United States during the month and the year which the said war savings certificate should be surrendered by said owner, and that no post office should make any such payment until ten days after receiving written demand therefor, and that upon surrender of a war savings certificate for payment, the receipt for payment printed on said war savings certificate should be signed by the owners thereof in the presence of the official of the United States to whom said war savings certificate was surrendered for payment.

And the said defendants had from time to time on and between January 18, 1918, and November 13, 1919, purchased, from persons not authorized by the Secretary of the United States to sell the same, a quantity of war savings certificates of the United States of the series of 1918 and of the series of 1919 (the said war savings certificates so purchased by the said defendants are hereinafter referred to as the purchased certificates); and the said purchased certificates were purchased by the defendants with war savings certificate stamps affixed thereto (the said war savings certificate stamps so affixed are hereinafter referred to as purchased stamps); and the said purchased certificates were war savings certificates of the United States that had theretofore been purchased by persons other
8 than the defendants or any of one of them from the Secretary of the Treasury of the United States.

And the said defendants then and there well knowing that the said purchased certificates and the said purchased stamps were, by reason of the terms and conditions of the sale of war savings certificates prescribed by the Secretary of the Treasury of the United States, as set forth above, were not transferable, were worthless in their hands, and were of no value to them and could not lawfully be redeemed by them at or prior to the maturity dates thereof, and that the United States was not obligated to make payment to them or any one of them therefor at or prior to maturity, and was not obligated to make payment therefor to any person save to a person who had purchased said war savings certificates from an authorized agent of the Secretary of the Treasury of the United States and to a person whose name has been written on said war savings certificate at the time of the issue and purchase thereof, did conspire to defraud the United States in that they, the defendants, did conspire to obtain

for themselves from the United States prior to the maturity date thereof money in payment for said purchased certificates and purchased stamps, to which they and each of them then and there well knew that they, and not any one of them, was entitled, and which they well knew the United States was not obligated to pay to them or to any one of them.

And the defendants did plan as a part of their conspiracy to defraud the United States to obtain in a manner contrary to the provisions of the act of Congress hereinbefore referred to, to the effect that the amount of war savings certificates sold to any one person at any one time should not exceed \$100, a number of blank war savings certificates of a maturity value in excess of \$100,

9 to which war savings certificate stamps had never been affixed, and on which the name of an owner had not been written

(the said blank war savings certificates so to be obtained by the defendants are hereinafter referred to as the blank certificates), to detach from the face of the purchased certificates the purchased stamps and to affix the said purchased stamps to the blank certificates and to write upon blank certificates the name of some person other than the name of any one of the defendants, and to cause such blank certificates so prepared by them, the defendants—that is, with the said purchased stamps so affixed and with the names so written thereon—to be presented to a post office of the United States on a date prior to the maturity date of said war savings certificates and to obtain from the United States money of the United States in payment for the certificates and stamps so prepared by them, the defendants, prior to the maturity date thereof.

And the defendants would and did then and there well know that the United States was not obligated to pay them money for the said purchased certificates for the said purchased stamps or the said blank certificates, and that the said purchased certificates, the said purchased stamps, and the said blank certificates were worthless in their hands, and that they were not, that not one of them was, entitled to receive payment therefor from the United States at or before maturity thereof, and that the United States was not obligated to pay them, or any one of them, therefor at or prior to maturity thereof.

And to effect the object of the said conspiracy the said defendant, Herman Janowitz, at the Southern District of New York and within the jurisdiction of this court, did maintain continuously on 10 each and every day during the months of August and September, in the year 1919, an office at the premises No. 63 Park Row, Borough of Manhattan, city of New York, for the purpose of purchasing war savings certificates of the United States and the war savings certificate stamps of the United States.

And so in the manner described the said defendants did at the time and place set forth conspire to defraud the United States, and one of the defendants did do and act to effect the object of said conspiracy, against the peace of the United States and their dignity

and contrary to the form of the statute of the United States in such case made and provided. (Section 37, U. S. C. C.)

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Second count.

And the grand jurors aforesaid, on their oaths aforesaid, do further present:

That Herman Janowitz, Herman Oestreich, Henry Goldstein, Etta Levine, Julius Roth, and John C. Dalton, hereinafter referred to as the defendants, did at the Southern District of New York and within the jurisdiction of this court continuously, unlawfully, and willfully on January 18, 1919, and on each and every day thereafter up to and including November 13, 1919, conspire to commit offenses against the United States in that the defendants did conspire to alter, with intent to defraud, obligations of the United States, that is to say, that at all the times herein mentioned, the Secretary of the Treasury of the United States under the authority conferred upon him by the act of Congress approved September 24, 1917, entitled "An act to authorize an additional issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend additional credit to foreign Governments, and for other purposes," and as amended by the act of Congress approved September 24, 1918, was engaged in borrowing money from the public of the United States, by issuing, selling, and offering for sale through persons duly authorized, war savings certificates of the United States of the series of 1918 and 1919, and was engaged in selling and offering for sale war savings certificate stamps for the purpose of being used as evidence of payment for and on account of said certificates:

And the said war savings certificates of the United States, so being issued, sold, and offered for sale by the Secretary of the Treasury of the United States, were obligations of the United States, and
12 the value of each depended upon the number of war savings certificate stamps of the United States thereto affixed.

And by the terms of the said acts of Congress, it was provided that the maturity date of said war savings certificates of the United States should be at a time not exceeding five years from the date of issue thereof, and pursuant to the authority conferred upon him by the said acts of Congress, by circular dated November 15, 1917, the Secretary of the Treasury of the United States fixed the date of issue of war savings certificates of the series of 1918 as January 2, 1918, and fixed the date of maturity thereof as January 1, 1923; and by circular dated December 18, 1918, fixed the date of issue of war savings certificates of the series of 1919 as January 1, 1919, and the date of maturity as January 1, 1924.

And by the terms of said acts of Congress the Secretary of the Treasury of the United States was empowered and authorized to prescribe the form of war savings certificates, to prescribe the terms and conditions of the sale thereof, and to determine the price thereof;

And by the terms of said acts of Congress it was provided that the said war savings certificates should be payable and redeemable before maturity upon such terms and conditions as should be prescribed by the Secretary of the Treasury, and he, pursuant to such authority, did prescribe terms and conditions relating to the redemption of war savings certificates prior to maturity thereof;

And it was provided by said acts of Congress of September 24, 1917, and September 24, 1918, that the amount of war savings certificates of the United States of any one series sold to any one person at any one time should not exceed the maturity value of \$100, and that it should not be lawful for any one person at any one time to hold war savings certificates of the United States of any one series of an aggregate maturity value exceeding \$1,000;

And the Secretary of the Treasury of the United States under the authority conferred upon him by said acts of Congress, by circulars issued by him, respectively, on November 30, 1917, and December 18, 1918, prescribed terms and conditions of the sale of war savings certificates, by the said circular of November 30, 1917, prescribing terms and conditions for the sale of war savings certificates of the series of 1918, and by the circular of December 18, 1918, the terms and conditions of the sale of war savings certificates of the series of 1919;

And among said terms and conditions of said sales of said war savings certificates of the United States, the said Secretary of the Treasury prescribed, as applicable alike to the series of 1918 and to the series of 1919 that no war savings certificates would be issued unless at the same time one or more war savings certificate stamps should be purchased and affixed thereto; that the name of the owner of each war savings certificate must be written upon such certificate at the time of the issuance thereof; that the said war savings certificates were not transferable and were payable by the United States only to the respective owners named thereon, except in cases of death or disability of the owner thereof; that the owner of a war savings certificate at his option would be entitled prior to the maturity of war savings certificates to receive at a money-order post office of the United States upon surrender of his certificate to said post office in respect to each war savings certificate stamp then affixed to such war savings certificate, an amount of money fixed by the Secretary of the Treasury to be the price at which said war savings certificate stamp should be redeemed by the United States during the month and the year of the said war savings certificate should be surrendered by said owner, and that no post office should make any such payment for or account of a war savings certificate until ten days after receiving written demand therefor, and that upon surrender of a war savings certificate for payment the receipt for payment printed on said war savings certificate should be signed

by the owner in the presence of the official of the United States to whom said war savings certificate was surrendered for payment.

And the said defendants had from time to time on January 18, 1919, and between that date and November 13, 1919, purchased from persons not authorized by the Secretary of the Treasury of the United States to sell the same, a quantity of war savings certificates of the series of 1918, and of the series of 1919 (the said war savings certificates so purchased by the said defendants are hereinafter referred to as the purchased certificates); the said purchased certificates were purchased by the defendants with war savings certificate stamps affixed thereto (the said war saving certificate stamps so affixed to said purchased certificates are hereinafter referred to as purchased stamps); and the said purchased certificates were war savings certificates that had theretofore been purchased by persons other than the defendants or any one of them from the Secretary of the Treasury of the United States through his agents authorized to sell the same.

And the said purchased certificates were obligations of the United States as the defendants then and there well knew.

And the said defendants well knowing that the said purchased certificates and the said purchased stamps were by reason of the terms and conditions of the sale of war savings certificates as prescribed by the Secretary of the Treasury of the United States as set forth above, worthless in their hands and of no value to them and could not be redeemed by them at or prior to the maturity dates thereof, and that the United States was not obligated to make payment to them or to any one of them therefor at or prior to maturity thereof and was not obligated to make payment therefor to any person save the person who had purchased said war savings certificates from an authorized agent of the Secretary of the Treasury of the United States, and the said defendants well knowing that they and not one of them was a person who has purchased the said purchased certificates from an agent of the Secretary of the Treasury of the United States, did conspire wilfully to alter in the manner herein described the said purchased certificates knowing the same to be obligations of the United States, with the intention of and for the purpose of defrauding the United States in the following manner, that is to say, the said defendants did plan to obtain a number of blank war savings certificates to which war savings certificate stamps had never been affixed and on which the name of an owner had not been written (the said blank war savings certificates so to be obtained by the defendants are hereinafter referred to as the blank certificates), to detach from the face of the purchased certificates the purchased stamps and so to alter the said purchased certificates and to affix the said purchased stamps to the blank certificates, and to write upon the face of said blank certificates the name of some person other than the name of any one of the defendants, and to cause such blank

certificates with the said purchased stamps so detached from the
purchased certificates and so affixed to the blank certificates
16 by the defendants with the names so written on the said blank
certificates by the defendants, to be presented to a post office
of the United States on a date prior to the maturity date of said war
savings certificates and to obtain from the United States money of
the United States in payment for the certificates so obtained and
prepared by them, the defendants, and the defendants would and did
then and there know that the United States was not obligated to pay
them money for the said purchased certificates, or for the said pur-
chased stamps which had been affixed thereto, or for the said blank
certificates, and that the said purchased certificates, said purchased
stamps, and the said blank certificates were worthless in their hands,
and that they, the defendants, and not one of them was entitled to
obtain any money from the United States for or on account of said
purchased certificates, the said purchased stamps, or the said blank
certificates, at or prior to maturity thereof, and that the United
States was not obligated to pay them or any one of them therefor.

And to effect the object of the said conspiracy, the said defendant,
Herman Janowitz, at the Southern District of New York, and within
the jurisdiction of this court, did maintain continuously on each and
every day during the months of August and September in the year
1919, an office at the premises No. 63 Park Row, Borough of Man-
hattan, City of New York, for the purpose of purchasing and alter-
ing war savings certificates of the United States; against the peace
of the United States and their dignity, and contrary to the form of
the statute of the United States in such case made and provided.
(Sections 37 and 141, U. S. C. C.)

FRANCIS G. CAFFEY,
United States Attorney.

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8269-No. 21-190.

(Endorsed:) U. S. District Court. The United States of
America vs. Herman Janowitz, Herman Oestreicher, Henry Gold-
stein, Etta Levine, Julius Roth, and John C. Dalton. See 20/243.
Indictment. Conspiracies to defraud the United States and to vio-
late sec. 148 U. S. C. C. Francis G. Caffey, U. S. Attorney. A true
bill. Cyrus F. Tibbals, foreman. U. S. District Court, S. D. of
N. Y. Filed Feb. 2, 1920.

1920. Feb. 3. Defts. Janowitz, Oestreicher, Goldstein, Levine,
plead not guilty.

1920. Feb. 21. Demurrer filed and argued, Hough, J.

1920. Feb. 27. Filed opinion, Hough, J. Motion to quash granted
and demurrer sustained.

C. M. HOUGH,
J.

18 District Court of the United States for the Southern District
of New York.

<p>THE UNITED STATES OF AMERICA, PLAINTIFF, AGAINST HERMAN JANOWITZ, HERMAN OESTREICHER, HENRY Goldstein, Etta Levine, Julius Roth, John C. Dalton, defendants.</p>	}	<p>Demurrer to Indictment 8269. 21-190.</p>
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Now come Herman Janowitz, Herman Oestreicher, and Henry Goldstein, in their own proper person into court and say that the said indictment and matters therein contained in manner and form as the same are there stated and set forth are not sufficient in law, in that the indictment does not state facts sufficient to constitute an offense against the United States and the same is insufficient in law, and that they, the said Herman Janowitz, Herman Oestreicher, and Henry Goldstein are not bound by law of the land to answer the same, and this they are ready to verify.

Wherefore, for want of sufficient indictment in this behalf, the said Herman Janowitz, Herman Oestreicher, and Henry Goldstein pray judgment that by the court they may be dismissed and discharged from the said premises in the said indictment specified.

Dated New York, February 9, 1920.

GOLDSTEIN & GOLDSTEIN,

Attorneys for Herman Janowitz, Herman Oestreicher, and Henry Goldstein, 366 Broadway, Borough of Manhattan, New York City.

Filed Feb. 21, 1920.

19 District Court of the United States, Southern District of
New York.

<p>UNITED STATES OF AMERICA, VS. PAUL SACKS.</p>	}	<p>Indictment 7828. Docket C 20-251.</p>
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<p>UNITED STATES, VS. HERMAN JANOWITZ, HERMAN OESTREICHER, HENRY Goldstein, Etta Levine, Julius Roth, and John C. Dalton.</p>	}	<p>Indictment 8269. Docket C 21-170.</p>
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The case of Sacks having been called for trial, defendant moved in open court to quash the indictment on the ground that upon the true construction of the statutes suggested as authorizing the prosecution, Sacks could not be guilty.

The case of Janowitz et al. being likewise called on the day calendar for trial, defendants with the consent of the prosecutor moved to withdraw their pleas of not guilty and offer a demurrer

the indictment. The motion was granted, and on a day subsequent both the motion to quash and the demurrer were argued at length.

The cases are thought to be typical of a considerable number of prosecutions now pending in this district, and considering the nature of the criminality alleged and the diversity of opinion that has arisen thereupon it has seemed best to permit, and indeed facilitate, the presentation of the legal questions in such shape that if decided adversely to the prosecution, authoritative review will be not only possible but expeditious.

The several counts of these indictments rest not only upon the sections of the Criminal Code hereinafter pointed out, but on the 6th section of the act of September 24, 1917 (which authorized war-saving certificates") and the 2d section of the act of September 24, 1918, but upon a series of "Department circulars" issued from the office of the Secretary of the Treasury and of which this court has taken judicial notice.

These circulars are No. 94, or War Saving Circular No. 1, dated November 15, 1917; No. 108, or War Saving Circular No. 8, dated January 21, 1918; No. 101, War Saving Circular No. 5, dated February 19, 1918, and No. 128, dated December 18, 1918.

The first and second counts of the Sacks indictment allege a violation of section 148 of the Criminal Code in that Sacks with intent to defraud altered an obligation of the United States, to wit: a war-saving certificate, by tearing a war-saving stamp of 1918 therefrom. The second count of the Janowitz indictment alleges that the defendants conspired to violate section 148 in that they purchased certificates of the series both of 1918 and 1919 from persons not authorized to sell the same by the Secretary of the Treasury; that they also obtained war-saving certificates to which stamps had never been affixed and on which no owner's name had ever been written, and that they intended and agreed to detach the stamps from the purchased certificates and affix the same to the blank certificates, to the end that in the name of some person other than the defendants the certificates might be presented for redemption at a post office and at date prior to maturity.

Thus Sacks is accused under what is usually called the counterfeiting statute, and Janowitz et al. are accused of conspiring to commit the same offence.

The third count of the Sacks indictment rests on section 151 of the Criminal Code and charges the defendant with keeping in possession with intent to defraud an altered obligation of the United States—that is to say, a piece of pasteboard obviously torn from a certificate of the series of 1918 and having three stamps affixed. The original documents said to have been forged or altered by Sacks are annexed to and made a part of the indictment against him. The first count of the Janowitz indictment charges under section 17 of the Criminal Code a conspiracy to defraud the United States

by doing exactly the same things as are specified in the second count to constitute a conspiracy to commit an offence under sec. 148.

The scienter as to fraud is thus set forth:

"And the defendants would and did then and there well know that the United States was not obligated to pay them money for the said purchased certificates for the said purchased stamps or the said blank certificates, and that the said purchased certificates, the said purchased stamps, and the said blank certificates were worthless in their hands, and that they were not, that not one of them was entitled to receive payment therefor from the United States at or before maturity thereof, and that the United States was not obligated to pay them or any one of them therefor at or prior to maturity thereof."

Joseph A. Seidman for Sacks;

David Goldstein and Aiken A. Pope for Janowitz, Oestreicher, and Goldstein;

John McKim Minton, jr., and Joseph F. Curren for Levine;

22 Francis G. Caffey, U. S. attorney, and

James W. Osborne, special assistant to the Attorney General for the United States.

Memorandum decision.

The words of the act of Congress especially invoked in this matter are that "it shall not be lawful for any one person at any one time to hold war-savings certificates to an aggregate amount exceeding \$1,000," and the further provision: "The Secretary of the Treasury may, under such regulations and upon such terms and conditions as he may prescribe, issue * * * stamps to evidence payments for or on account of such certificates." It was under this statute that the issue of 1918 was put forth; the only material difference as to the issue of 1919 was an amendment of the act declaring that "it shall not be lawful for any one person at any one time to hold war-saving certificates of any one series to an aggregate amount exceeding \$1,000."

Department circulars Nos. 94, 101, and 108 may reasonably be taken from their date to apply to the issue of 1918. Circular No. 128 is the announcement of the certificate series of 1919, but I do not think that circular changed the material regulations previously issued and affecting all war savings certificates.

I have assumed that all these circulars are to be treated as Treasury Regulations, although only one of them (No. 108) is called by that name.

Circular 94 declares that a war saving certificate of the series of 1918 "will be an obligation of the United States when, and only when," at least one stamp is affixed thereto, but the Secretary "offers for sale" war saving certificates payments for or on account of which "must be evidenced by" stamps which "are to be affixed thereto."

23 It is declared that no certificate will be issued unless at least one stamp shall at the same time be purchased and affixed thereto, but "no additional charge" will be made for the certificate itself. It is required that the name of the owner of each certificate must be written thereupon "at the time of the issue thereof."

It is then declared by No. 94 that "war saving certificates are not transferrable and will be payable only to the respective owners named thereon" except in events not now material. I think these were all the instructions, regulations, or rules in existence at the time stamps were first put on sale.

No. 108, which is formally entitled as a "Treasury regulation," contains in its 14th paragraph the language thought to be most important in this litigation.

It is by that rule provided that if any person receives certificates in excess of an aggregate of one thousand dollars maturity value in any lawful manner the excess amount shall be immediately surrendered at a money-order post office and be paid for at their then value; but "in any other case if it shall appear at the time a certificate is presented for payment that the person presenting the same holds certificates to an aggregate amount exceeding a thousand dollars maturity value the postmaster shall refuse payment of all certificates in excess of such amount and shall demand surrender of certificates held by such owner until the holdings of such owner are reduced to a thousand dollars maturity value. The postmaster shall make appropriate notation on certificates so surrendered and shall forward such certificates to the Third Assistant Post-
24 master General for transmission to the Secretary of the Treasury. Such certificates shall have no validity for any purpose."

Under these rules or regulations and the statute it has been admitted on this argument that a war-saving stamp is property in the ordinary sense of the word; that it may pass from hand to hand like any other similar piece of property.

Yet it is said that this property has no value in and of itself; it is but a receipt for a certain amount of money; but when it is affixed, not to any certificate of the corresponding series, but to a certificate bearing the name of the person who obtained it from an agent of the Treasury and still owned by that person, it becomes an integral, irremovable portion of an indissoluble obligation of the United States.

The remainder of the Treasury or prosecutor's position is that if by purchase one accumulates certificates bearing stamps in excess of a thousand dollars maturity value such excess is subject to confiscation if the postmaster can get hold of it; but in any event the excess certificates "shall have no validity for any purpose."

Applying these regulations to these indictments it is observable that in the Sacks indictment there is no effort to apply, and that instrument bears no relation to regulation No. 14. It is not alleged that Sacks had or tried to get more than a thousand dollars worth of certificates of the series of 1918 (maturity value). The proposition

is baldly that when Sacks removed a stamp from a certificate bearing a name not his own, and did it "with intent to defraud," he became what is commonly called a counterfeiter under section 148.

And in the third count it is alleged in substance that when
25 Sacks had in possession "with intent to defraud the United States and with intent to pass and sell the same" a piece of pasteboard having certain stamps upon it, he was criminally possessed of a counterfeited obligation of the United States under section 151.

In other words the excess proviso of the Treasury regulation has no application to the Sacks indictment.

The Janowitz indictment is more subtle, for both counts allege in substance a business scheme, viz, the purchase of war-saving certificates with intent to detach stamps therefrom and use them upon other certificates bearing other names.

But nowhere is it alleged as a part of the conspiracy that any member of the postal force was to be corrupted in order that the defendants might procure money for any certificates either before or at maturity. The proposition baldly is that purchased certificates and the stamps affixed thereto were worthless for any purpose in the hands of the purchaser, no matter whether the amount of such purchased certificates was small or great; the proposition is that, once affixed to a certificate, the united stamp and pasteboard became sacrosanct and can not be disunited; and the moment such legal entity passes from the hand of the original holder (by purchase at all events) to the hand of another, it crumbles into legal dust and becomes, in the language of the Janowitz indictment "worthless in their hands" (i. e. the purchaser's hand), and so worthless that payment could never become due either "at or before maturity."

It may here be noted that the language of the stamp of the series of 1918 is this: "United States War Savings Certificate
26 Stamp. When affixed to a certificate, five dollars will be payable January 1, 1923.

One other matter has in argument at this bar been admitted all around, viz, that when Congress said that it should "not be lawful" for any one person at any one time to hold more than a thousand dollars worth of war-savings certificates, Congress did not make such holding a crime.

To me it appears very plain that the foregoing elements of discussion produce the following problems:

(1) Do the rules of the Treasury prohibit so as to render valueless in the hands of the transferee, war-savings stamps, as distinct from the certificates or pasteboards to which they are attached?

(2) If the Treasury rules are to be interpreted as going this far, is their violation criminal?

(3) If the rules do go as far as above indicated and the intent thereof was to make their violation criminal, are such rules so interpreted within the statutory power of the Secretary of the Treasury?

First. It appears to me plain that neither of the counts in the Sacks indictment, nor the second count in the Janowitz indictment requires the Treasury regulations to be interpreted as taking all value out of transferred stamps.

Indeed, the very allegation that the removal of a stamp constitutes alteration within the counterfeiting act seems necessarily to imply a value in the thing removed.

But the first count of the Janowitz indictment plainly invokes that very wide definition of the phrase "defraud the United States" which received authoritative statement in *Haas vs. Henkel*, 216 U. S., 462, and it is said (in substance) that it is a lawful function of the

27 Treasury Department to prevent the United States being compelled, or even requested, to redeem a war-saving stamp in any other manner than for the person and in the manner preferred by the Treasury. Wherefore it was a lawful exercise of the regulatory power conferred by the statute to destroy and destroy utterly all property value in a transferred certificate, and therefore in a transferred stamp if attached thereto.

It cannot be denied that such destruction of property rights is a possible exercise of congressional power; section 3477 Revised Statutes as interpreted in *re Hudford Co.*, 257 F. R. 722 and cases cited, proves this.

In my opinion, therefore, the regulation prohibiting transfer, taken in conjunction with the 14th section of circular 108, is an effort by the Secretary through departmental regulations to produce exactly the condition wrought by Congress under the section of the Revised Statutes last above referred to.

Second. If the Treasury regulations thus interpreted are reasonable, appropriate and consistent with the act of Congress their violation is as much a transgression of the statute as if the regulatory provision had been written in the act. This seems to me the result of *United States vs. Morehead*, 243 U. S. 607, and *United States vs. Small*, 236 U. S., 405.

Applying the extreme interpretation which seems necessary to sustain the first Janowitz count to the crimes averred under Criminal Code sections 148 and 151, it must follow that it is as much counterfeiting or forging to put a transferred stamp on a certificate as it is to detach a stamp from a certificate and thereby alter the same.

This extreme interpretation must I think be adopted throughout, because the regulations cannot be so interpreted in one breath as to sustain a count that rests only on section 37, and then softened
28 when the extreme holding is not necessary to sustain other counts.

Third. The preferred statement of the prosecutor in support of especially section 14 of circular 108 is that a stamp in and of itself is nothing; it has no value except as a receipt.

From this flows the assertion that when that receipt is affixed to a pasteboard which by itself has no value whatever, the two things

put together become an obligation of the United States not dissimilar from a bond or a Treasury note, except that the quality of assignability or transferability is denied to it.

It is said that even if the stamp, per se worthless, may pass from hand to hand, it becomes when affixed to the certificate like the ink upon a note and its removal is as much an alteration as would be the erasure of that ink.

To me this is an ingenious but fallacious arrangement of words. To deny value to the war saving stamp is against common sense and contradictory to a course of business vigorously pursued for the last few years, which has succeeded in forcing these stamps into the possession of people whom it is sarcasm to call "investors," and who would be surprised beyond measure to be told that their stamps had no "value."

When Congress authorized the issuance of "stamps to evidence payments for or on account of such certificates," and did not deny to the stamp holders the right of transfer, such right existed. The Treasury has sought to take it away by making the certificates non-transferable. Assuming that power exists to prohibit transfer of the certificates, I am wholly unable to perceive that there is any congressional authority for the Secretary's prohibiting the transferability of the stamps affixed to the certificates.

29 Nowhere is it said that any particular stamp shall evidence a payment on any particular certificate.

This I think is the gist of the matter: Is a regulation which as interpreted, in terms takes away a property right in a manner not specifically authorized by statute, a valid rule? I cannot persuade myself that such is the case.

Congress has certainly not done that which was held sufficient to make a crime of rule violation in *United States vs. Grimaud*, 220 U. S. 506. The *Smull* and *Morehead* cases, *supra*, do I think hold that where the manner of obtaining a grant is committed to a department, that department may regulate the procedure to obtain the same, and if a violation of that procedure runs counter to any criminal statute of Congress, then violation of the regulation is punished by the statute, and so within the *Grimaud* case, *supra*.

But the prohibition against transfer of stamps affixed or unaffixed is far more than a procedural regulation. A stamp is a thing of value, bought and paid for, and to deprive it of the quality of assignability is a diminution of lawfully existing property rights for which in my judgment congressional action alone will suffice.

One further consideration is peculiar to the third count of the Sacks indictment.

It is not alleged that Sacks tore up or tore off a piece of pasteboard bearing stamps from a War Savings certificate. It must be assumed that he did not do it, and I think it must even be assumed (in favor of innocence) that the holder and owner pursuant to Treasury regulations of the certificate from which the piece was torn, did the

deed himself. The necessary implication of this third count is that such an act by the owner of the obligation constituted a violation of section 148, for only by that holding could Sacks' position be a violation of section 151, in manner and form as alleged. It follows, therefore, that by Treasury regulation alone an owner destroys an obligation (for this certificate was certainly destroyed as such) violates section 148, unless he also destroys the papers which are just as much his after destruction of the pasted as they were before, unless of course the Treasury Department can diminish his property right.

The department has endeavored to diminish such property right, indeed to destroy it utterly unless the right is exercised as per regulation. It does not seem to me that this is a method of carrying out the statute as written; it is additional and very drastic attempted legislation.

For these reasons the motion to quash is granted and the demurrer sustained.

Feb. 27, 1920.

CHAS. M. HOUGH,
U. S. C. J.

Filed Feb. 27, 1920.

Order for judgment.

It is stated term of the District Court of the United States for the Southern District of New York, for the trial of criminal causes, that at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York, on the 26 day of February, 1920.

Present: Hon. Charles M. Hough, U. S. Judge.

THE UNITED STATES

vs.

HERMAN JANOWITZ, HERMAN OESTREICHER, HENRY GOLDSTEIN, ETTA LEVINE, JULIUS ROTH, and JOSEPH C. DALTON.	}	Indictment No. 8269.
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An indictment against Herman Janowitz, Herman Oestreicher, Henry Goldstein, Etta Levine, Julius Roth, and Joseph C. Dalton, defendants above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York, in the office of the clerk of the District Court of the United States for the Southern District of New York, on the 2nd day of February, 1920, and thereafter a demurrer having been proposed to said indictment on the 16th day of February, 1920, and thereafter Messrs. Goldstein & Goldstein, attorneys for defendants, having been heard in support of said demurrer, and James Osborne, special assistant to the Attorney General, having been heard in behalf of the United States.

Now, upon motion of Messrs. Goldstein & Goldstein, attorneys for defendants, it is

Ordered and adjudged that said demurrer is sustained as to each and every count of said indictment, because the facts alleged in either count of the indictment are not sufficient to constitute a crime under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, section 6, and the act of Congress of September 24, 1918, section 2 thereof, and sections 37 and 148 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force, and it is further ordered that judgment be entered accordingly.

C. M. HOUGH,
U. S. Circuit Judge.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 26, 1920.

33 *Judgment.*

United States District Court, Southern District of New York.

THE UNITED STATES
VS.

HERMAN JANOWITZ, HERMAN OESTREICHER, Henry Goldstein, Etta Levine, Julius Roth, and Joseph C. Dalton.	Indictment No. 8269.
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An indictment against Herman Janowitz, Herman Oestreicher, Henry Goldstein, Etta Levine, Julius Roth, and Joseph C. Dalton, the defendants above named, having been found and filed by the grand jurors of the United States in and for the Southern District of New York in the office of the clerk of the District Court of the United States for the Southern District of New York, on the 2nd day of February, 1920, and thereafter a demurrer having been interposed to said indictment on the 16th day of February, 1920, and thereafter Messrs. Goldstein & Goldstein, attorneys for said defendants, having been heard in support of said demurrer, and James W. Osborne, special assistant to the Attorney General, having been heard on behalf of the United States.

Now, upon motion of Messrs. Goldstein & Goldstein, attorneys for defendants, it is

Ordered and adjudged that said demurrer is sustained as to each and every count of the indictment, because the facts alleged in either count of the indictment are not sufficient to constitute a crime under any construction of the act of Congress upon which it is alleged to be predicated, to wit, the act of Congress of September 24, 1917, section 6, and the act of Congress of September 24, 1918, section 2

thereof, and sections 37 and 148 of the Criminal Code of the United States, or under the construction of any other statute of the United States now in force.

34 Judgment entered this 26th day of March, 1920.

ALEX GILCHRIST, Jr.,

*Clerk of the District Court of the United States
for the Southern District of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 26, 1920.

35 District Court of the United States, Southern District
of New York.

UNITED STATES

v.

HERMAN JANOWITZ, HERMAN OESTREICHER,
Henry Goldstein, Etta Levine, Julius
Roth, and John C. Dalton.

Assignments of error.

*The United States of America in connection with its petition for writ of error, make the following assignments of error which they allege occurred in the decision of the court herein in quashing the indictment herein, to wit:

(1) The court erred in sustaining the demurrer to the indictment herein.

(2) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the facts averred in the first count thereof did not constitute a violation of section 37 of the United States Criminal Code.

(3) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the facts averred in the second count thereof did not constitute a violation of section 37 of the United States Criminal Code.

(4) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the facts averred in the second count thereof did not constitute a conspiracy to violate section 148 of the United States Criminal Code.

36 (5) The court erred in holding as it did in sustaining demurrer to the indictment herein, that by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, the Secretary of the Treasury of the United States was not empowered and authorized to make rule and regulation governing the sale of war savings certificates of the United States providing that war savings certificates of the United States should be nontransferable and should be of no value

to anyone save the owner named thereof, whose name had been written thereon at the time of issue thereof.

(6) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the promulgation of a rule and regulation by the Secretary of the Treasury governing the sale of war savings certificates of the United States by which the Secretary of the Treasury provided that war savings certificates of the United States should be nontransferable and of no value to any person save the owner, whose name had been thereon written at the time of the issue of such certificate, was not a lawful exercise of authority conferred upon him by section 6 of the act of Congress of September 24, 1917, and by section 2 of the act of Congress of September 24, 1918.

(7) The court erred in holding as it did in quashing the indictment herein that the prescribing by the Secretary of the Treasury of a term and condition of the sale of war savings certificates of the United States by which it was provided that war savings certificates of the United States should be nontransferable and should be of no value to any person save the owner named thereon and was not a lawful exercise of authority conferred upon him by section 6 of the act of Congress of September 24, 1917, and by section 2 of the act of Congress of September 24, 1918.

(8) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the promulgation by the Secretary of the Treasury of a rule and regulation governing the sale of war savings certificates of the United States to the effect that the name of the owner of each war savings certificate of the United States be written upon each certificate at the time of the issue thereof was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(9) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the prescribing by the Secretary of the Treasury of a term and condition of the sale of war savings certificates of the United States by requiring that the name of the owner of each war savings certificate of the United States be written upon each certificate at the time of the issue thereof, was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(10) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States authority to promulgate a rule and regulation of the sale of war savings certificates of the United States requiring that the name of the owner of each war savings certificate of the United States be written upon each war savings certificate of the United States at the time of the issue thereof.

(11) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the act of Congress September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States power and authority to prescribe as a term and condition of the sale of war savings certificates of the United States that the name of the owner of each war savings certificate of the United States be written upon each war savings certificate of the United States at the time of the issue thereof.

(12) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the promulgation by the Secretary of the Treasury of a rule and regulation providing that war savings certificates could be redeemed at or prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(13) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the prescribing by the Secretary of the Treasury of a term and condition of sale of war savings certificates, that war savings certificates could be redeemed at or prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

(14) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States authority to promulgate a rule and regulation of the sale of war savings certificates of the United States that war savings certificates could be redeemed at or prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate.

(15) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the act of Congress of September 24, 1917, section 6 thereof, and the act of Congress of September 24, 1918, section 2 thereof, did not confer upon the Secretary of the Treasury of the United States authority to prescribe as a term and condition of the sale of war savings certificates of the United States that war savings certificates could be redeemed at or prior to maturity by no person save the owner whose name had thereupon been written at the time of the issue of the said certificate.

(16) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the promulgation by the Sec-

retary of the Treasury of a rule and regulation governing the sale of war savings certificates of the United States and the prescription by him of a term and condition thereof that war savings certificate stamps affixed by an owner of a war savings certificate to a war savings certificate become irremovable portions of an indissoluble obligation of the United States, was not a lawful exercise of the authority conferred upon him by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof.

40 (17) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the Secretary of the Treasury of the United States did not have authority under the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, to promulgate a rule and regulation governing the sale of, and to prescribe a term and condition of the sale of war savings certificates of the United States that war savings certificate stamps should have no redeemable value unless attached to a war savings certificate of the United States.

(18) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the tearing of a war savings certificate stamp from a war savings certificate of the United States did not constitute an alteration of an obligation of the United States within the meaning of section 148 of the United States Criminal Code.

(19) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that conspiring of two or more persons to tear a war savings certificate stamp of the United States from a war savings certificate of the United States, and the doing of an act by one of such persons to accomplish the object of such conspiracy did not constitute a violation of section 37 of the United States Criminal Code.

(20) The court erred in holding as it did in sustaining the demurrer to the indictment herein, that the Secretary of the Treasury of the United States was not empowered by the act of Congress of September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, to prescribe as a regulation governing, and a term and condition of, the sale, of war savings certificates of the United States that after a war savings certificate stamp had been attached to a war savings certificate by an owner

of such certificate, that the said stamps could not be detached
41 from such certificate by a person other than the said owner of such certificate without the loss of the right to attach such stamps to different war savings certificate not belonging to the owner of the certificate first mentioned and thus make the latter certificate an obligation of the United States.

(21) The court erred in holding as it did in sustaining the demurrer to the indictment herein that the Secretary of the Treasury of the United States was not authorized by the act of Congress of

September 24, 1917, section 6 thereof, and by the act of Congress of September 24, 1918, section 2 thereof, to make nontransferable a war savings certificate stamp of the United States after it had been attached to a war savings certificate of the United States by the owner of such war savings certificate of the United States.

The United States aforesaid, plaintiff-in-error, prays that the decision aforesaid and the order entered thereon for the errors aforesaid in the record and proceeding herein may be reversed and altogether held for nothing and that the plaintiff-in-error may be restored to all things which it has lost by reason of said decision and order and judgment, and that the District Court of the United States be directed to vacate and set aside said order and judgment and to compel the defendant-in-error to plead to the indictment herein, and for such other and further relief as to the court may seem proper.

Dated New York, March 26, 1920.

FRANCIS G. CAFFEY,
*United States Attorney for the
Southern District of New York.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 27, 1920.

42 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.

HERMAN JANOWITZ, HERMAN OESTREICHER, HENRY
Goldsmith, Etta Levine, Julius Roth, and Joseph
C. Dalton.

Petition for
writ of error.

Now comes United States of America, by its attorney, Francis G. Caffey, United States Attorney for the Southern District of New York, and complains that in the record and proceedings had in this cause, sustaining the demurrer to the indictment herein, a manifest error hath happened, as well appears from the assignments of error herewith submitted. The United States of America prays for the allowance of a writ of error and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated New York, N. Y., March 27, 1920.

FRANCIS G. CAFFEY,
*United States Attorney for the
Southern District of New York,
Attorney for Petitioner.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 27, 1920.

43 By the honorable Learned Hand, one of the judges of the District Court of the United States for the Southern District of New York, to Herman Janowitz, Herman Oestreicher, Henry Goldsmith, Etta Levine, Julius Roth, and Joseph C. Dalton, defendants-in-error, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol, in the city of Washington, in the District of Columbia, on the 26th day of April, 1920, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the Southern District of New York, wherein the United States of America is plaintiff-in-error and you are defendants-in-error, to show cause, if any there be, why the judgment in said writ mentioned should not be corrected, and speedy justice should not be done in that behalf.

Given under my hand in the borough of Manhattan, in the city of New York, Southern District of New York, this 27th day of March, in the year of our Lord one thousand nine hundred and twenty and of the independence of the United States the one hundred and forty-fourth.

[SEAL.]

LEARNED HAND,

*Judge of the District Court of the United States
for the Southern District of New York.*

44 (Endorsed:) 621—190. U. S. District Court, Southern District of New York. The United States, plaintiff in error, versus Herman Janowitz, Herman Oestreicher, Henry Goldstein, Etta Levine, Julius Roth, and John C. Dalton, defendants in error. Citation. Francis G. Caffey, United States Attorney, attorney for plaintiff in error. Due service of a copy of the within is hereby admitted. New York, March 27, 1920. Attorney for defts. in error.

(Stamped:) Copy received, Mar. 27, 1920. Goldstein & Goldstein, Attorneys for defts.

(Stamped:) U. S. District Court, S. D. of N. Y. Filed Mar. 29, 1920.

45 (Endorsement on cover:) File No. 27,673, S. New York, D. C. U. S. Term No. 331. The United States of America, Plaintiff in Error, vs. Herman Janowitz, Herman Oestreicher, Henry Goldsmith, et al. Filed May 10th, 1920. File No. 37,673.